

ECS File: JPA-88-90  
Project No.: M-700-7(7)  
TRACS NO.: 7007 MA PHX SS124 01C  
Project: 43rd Avenue  
Section: Greenway Rd. to Bell Rd.

INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF PHOENIX

51717

THIS AGREEMENT is entered into March 13, 1989, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the State) and the CITY OF PHOENIX, acting by and through its CITY COUNCIL (Local Agency).

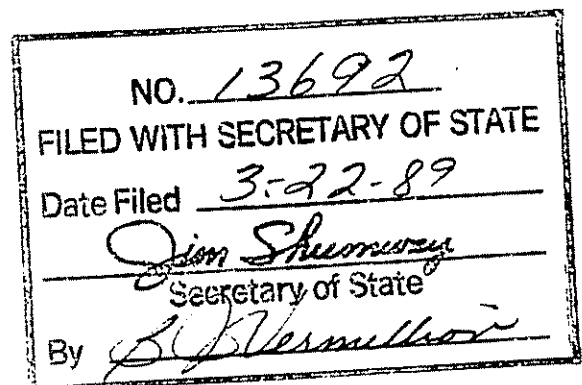
I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. Local Agency is empowered by Arizona Revised Statutes Section 11-951 through 11-954 and provisions in the City Charter Chapter 2 Section 2 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of Local Agency.

3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; rehabilitation and replacement of bridges; elimination of high hazards and removal of roadside obstacles; and highway safety improvements at railroad-highway grade crossings.

4. Such project within the boundary of Local Agency has been selected by Local Agency; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.



5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of Local Agency by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. Local Agency, in order to obtain federal funds for the construction of the project, is willing to provide the State with Local Agency funds to match federal funds in the ratio required or as finally fixed and determined by FHWA.

7. The work embraced in this agreement and the estimated cost are as follows: MAJOR STREET RECONSTRUCTION

Estimated Cost		\$2,710,673.00
Federal Funds @ 92.48 %		\$1,780,848.00
City of Phoenix Funds	=	\$ 199,022.00**
Non Federal Aid Funds	+	\$ 785,015.00*
TOTAL City of Phoenix Funds	=	<u>\$ 984,037.00</u>

\* Includes 3% of the non FA cost for ADOT construction overview.

\*\* This includes a 2% surcharge on the total cost as per Chief Deputy State Engineer memo of February 2, 1982.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the Local Agency, award the contract, enter into a contract with a firm to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Standard Specifications for Road and Bridge Construction of the Highways Division, Arizona Department of Transportation. Further, the State will enter into a Project Agreement with FHWA covering the work embraced in said construction contract and will request the maximum federal funds available.

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DEC 22 AM 1:07

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of Local Agency's deposit unless and until so authorized in writing by the Local Agency.

2. Prior to the solicitation of bids, the Local Agency shall deposit funds with the State in the amount determined by the State to be necessary to match federal funds in the ratio required. Upon completion of the construction contract, the State shall return to the Local Agency any part of the funds deposited by Local Agency remaining after Local Agency's pro rata share of the cost, as finally fixed and determined by FHWA, has been paid.

3. The Local Agency shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

4. The Local Agency shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom, prior to the start of construction.

5. The Local Agency shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the Local Agency shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the Local Agency.

6. Construction engineering services will be provided by Local Agency personnel in accordance with the approved plans, specifications, and the requirements of the relevant State and federal statutes, rules, or regulations. The FHWA will participate in the cost of construction engineering provided by Local Agency at the pro rata established in the Project Agreement for up to 15 percent of the cost of construction. Construction engineering costs not participated in by FHWA shall be borne by the Local Agency. All Construction project change orders are to be approved by the State.

7. Local Agency will complete the project in accordance with approved plans and specifications and the requirements of the relevant State and federal statutes, rules, or regulations. In the event the Local Agency fails to comply with the plans, specifications or any relevant State or federal statutes, rules, or regulations, it shall hold the State harmless from any claims or costs incurred by the State as a result of Local Agency's failure to comply.

8. State employees may perform any inspections of the project, audit any books or records of the Local Agency the State employees deem necessary, in order for the State to satisfy itself that the monies on the project have been spent and the project completed in accordance with the plans and specifications, statutes, rules, and regulations of the State and Federal government.

9. Upon completion of construction, the Local Agency shall provide for, at its own cost and as an annual item in its budget, proper maintenance, including, but not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

10. The Local Agency shall mark and sign school crossings and railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

11. By such regulation as it may by ordinance provide, the Local Agency shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic at intersections and at such other locations as necessary.

### III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. Local Agency assumes full responsibility for the design, plans and specifications, the engineering in connection therewith, the construction of the improvements contemplated, cost overruns, and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of Local Agency and that Local Agency hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, Local Agency, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the work covered by this agreement is to be borne by FHWA and Local Agency, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, Local Agency agrees to furnish and provide State with Local Agency funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled by the Governor in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this agreement.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518(B) and (C).

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Engineering Consultant Services  
205 South 17 Avenue, Room 118E  
Phoenix, AZ 85007

9. Attached hereto and incorporated herein by reference is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF PHOENIX

Marvin A. Andrews  
City Manager

By Kenny W. Harris  
Title Deputy City Engineer

Attest Alfred F. Hall  
DEPUTY City Clerk

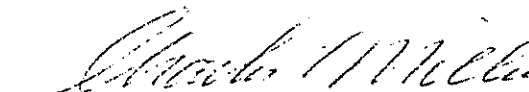
STATE OF ARIZONA  
Department of Transportation

By T. A. Bryant, II  
THOMAS A. BRYANT, II  
State Engineer

R E S O L U T I O N

Be it resolved on this, the 10th day of January, 1989, that I, CHARLES L. MILLER, as Director, Arizona Department of Transportation, have determined that pursuant to A. R. S. 28-108, it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through its Highways Division, enter into an Intergovernmental Agreement with the City of Phoenix for Projects M-700-7(7).

Work entails reconstruction of an arterial street to modern major urban street standards.

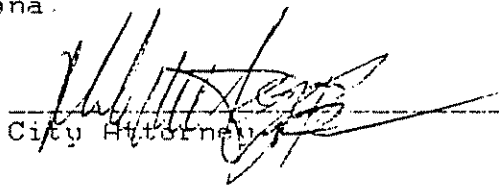
  
\_\_\_\_\_  
CHARLES L. MILLER, Director  
Arizona Department of Transportation

51717

PROJECT NO. P-845834  
INDEX NO M-700-7(7)

APPROVED AS TO FORM and within the powers and  
authorities granted to the City of Phoenix, under the  
laws of the State of Arizona.

ACTING

  
\_\_\_\_\_  
City Attorney



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. KR88-2845-TRD, is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 6<sup>th</sup> day of March, 1989.

ROBERT K. CORBIN  
Attorney General

A handwritten signature in cursive script, reading "James R. Reppe", is written over a horizontal line.

Assistant Attorney General  
Transportation Division



# REQUEST FOR COUNCIL ACTION

- TEEN - CITY CLERK
- ITE - CITY ATTORNEY
- UE - CITY MANAGER
- AK - ACCOUNTS NOTIFICATION
- NARY - DEPARTMENT NOTIFICATION
- JFF - DEPARTMENT FILE COPY

ALL RCAS MUST BE IN THE CITY MANAGER'S OFFICE BY NOON ON THE TUESDAY, SEVEN DAYS BEFORE THE FORMAL CITY COUNCIL MEETING WITH ALL REQUIRED SIGNATURES. COMPLETE THIS FORM PER M.P. 1906

To the City Manager:

DATE January 4 1989

THE FOLLOWING COUNCIL ACTION IS HEREBY REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☒ FORMAL ACTION.

## MAJOR STREET PROJECT INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION 43RD AVENUE GREENWAY ROAD TO BELL ROAD P-845834, W-871152, ST-853522, K-700-7(7) DISTRICT 2

Request the City Manager to enter into an Intergovernmental Agreement with the State of Arizona through its Department of Transportation for paving and storm drain improvements and waterline relocations and adjustments on 43rd Avenue from Greenway Road to Bell Road. The City will be responsible for construction administration with ADOT in a construction overview role. Upon completion, the City will sign, stripe, and maintain the street and storm drain improvements.

This Federal Aid project qualifies for federal funds for paving improvements only. The City will bear the entire cost for the installation of the Storm Drain Trunk line and waterline relocations and adjustments. The estimated total cost of the project is \$2,710,673. The break down is as follows:

Federal Funds 92.43%	\$1,780,845.00
City of Phoenix Funds	934,037.00
Paving	\$209,940.00
Storm Drain	756,123.00
Water	17,974.00

Funds are available through the 1988 Major Street, 1984 Storm Drain and 1983 Water Bonds.

2 Bid Bond (Surety) Required? <input type="checkbox"/> Yes <input type="checkbox"/> No		3 Bond submitted by low bidder? <input type="checkbox"/> YES <input type="checkbox"/> NO		4 Performance Bond (Surety) Required? <input type="checkbox"/> YES <input type="checkbox"/> NO																	
5 SOURCE OF FUNDS: <table border="1"><thead><tr><th>FUND</th><th>INDEX CODE</th><th>SUBJECT</th><th>PROJECT</th></tr></thead><tbody><tr><td>F</td><td>8</td><td>4</td><td>5</td></tr><tr><td>W</td><td>2</td><td>7</td><td>1</td></tr><tr><td>ST</td><td>8</td><td>5</td><td>2</td></tr></tbody></table>				FUND	INDEX CODE	SUBJECT	PROJECT	F	8	4	5	W	2	7	1	ST	8	5	2	12 Recommended by: Department/Function: <u>Transportation/Design</u> Division Head Signature: <u>[Signature]</u> Department Head Signature: <u>Deputy City Engineer</u>	
FUND	INDEX CODE	SUBJECT	PROJECT																		
F	8	4	5																		
W	2	7	1																		
ST	8	5	2																		
6 Emergency Clause? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF LESS THAN FIVE COUNCIL MEMBERS ARE PRESENT: <input type="checkbox"/> CONTINUE ONE WEEK <input type="checkbox"/> ADOPT WITHOUT EMERGENCY CLAUSE		7 Requested by: <u>[Signature]</u> 8 WP Document # <u>111 4969</u> 9 Desired Agenda Date: <u>January 10, 1989</u>		13 Approved as to availability of funds: <u>City Engineer</u> <u>[Signature]</u> MANAGEMENT & BUDGET DIRECTOR																	
10 Formal contract required? <input type="checkbox"/> Yes <input type="checkbox"/> No Previous contract # _____		11 Requisition # _____		14 Approved: _____ CITY MANAGER																	
15 Council action taken: <u>APPROVED</u> Formal action: <u>RESOLUTION NO _____</u> <u>ORDINANCE NO _____</u> DATE <u>1-25-89</u> <u>51717</u> CONTRACT NO <u>51717</u> CITY CLERK'S FILE NO <u>F 6129</u>																					